

IN RE NORTH MURPHY TIMBER SALE

IBLA 98-374, 98-399

Decided November 20, 1998

Appeal from a decision of the Grants Pass Resource Area Manager denying protests to the North Murphy Timber Sale. OR110-TS98-07.

Affirmed; Stay Request denied as moot.

1. National Environmental Policy Act of 1969: Environmental Statements--Timber Sales and Disposals: Generally

A finding of no significant environmental impact with respect to a proposed timber sale based on an environmental assessment which is, in turn, tiered to other environmental documents, including a District-wide EIS which analyzed the broader and cumulative impacts of timber harvesting, will be affirmed when the record establishes that BLM took a "hard look" at the environmental impacts of the activity, considered reasonable alternatives, applied mitigating measures to avoid significant adverse environmental impacts, and appellants have not shown significant environmental impacts other than those analyzed in the tiered documents.

2. Timber Sales and Disposals: Northwest Forest Plan: Generally

The harvesting of late successional forests within the Applegate Adaptive Management Area does not, of itself, violate the terms of the Northwest Forest Plan.

3. Timber Sales and Disposals: Northwest Forest Plan: Aquatic Conservation Strategy

The selective harvesting via commercial thinning of overstocked lands in riparian reserves within the Applegate Adaptive Management Area for the purpose of restoring forest vigor and lessening the dangers of catastrophic fires does not violate the Aquatic Conservation Strategy.

4. Timber Sales and Disposals: Northwest Forest Plan: Survey and Manage

Under Instruction Memorandum No. OR-97-007, "implementation" as used in reference to Strategy 2 surveys under the Northwest Forest Plan has been accorded a meaning equivalent to issuance of NEPA documentation.

APPEARANCES: Tom Dimitre, Ashland, Oregon, for appellant Headwaters; Marty Bergoffen, Esq., Williams, Oregon, for appellant Klamath Siskiyou Wildlands Center; Robert C. Korfhage, Grants Pass Resource Area Manager, Medford, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Headwaters and the Klamath Siskiyou Wildlands Center (KSWC) have individually appealed from separate decisions of the Grants Pass Resource Area Manager (Area Manager), Bureau of Land Management (BLM), dated May 29, 1998, and June 5, 1998, respectively, denying their protests to the North Murphy Timber Sale (OR110-TS98-07). For reasons set forth below, we affirm.

Appellants' protests had been directed to a Decision Record/Rationale/FONSI which the Area Manager had signed on March 16, 1998, approving Alternative 2 of the Revised Environmental Assessment for the North Murphy Forest Management Project (EA OR110-97-20 (Revised)), subject to the implementation of that part of Alternative 3 which provided for a corridor/connectivity area (Corridor B) located in sec. 13, T. 37 S., R. 5 W., Willamette Meridian. More specifically, the Area Manager's decision authorized, inter alia, the sale of approximately 3,597 Mbf (thousand board feet) of merchantable timber to be harvested by partial cut (commercial thinning/group selection) on 799 acres of land 1/ within the Applegate Adaptive Management Area (AMA). 2/

The North Murphy Revised EA was, in turn, expressly tiered to a number of other documents, including the Final Environmental Impact Statement and Record of Decision (ROD) for the Medford District Resource Management Plan (RMP), the Northwest Forest Plan (NFP) with particular emphasis on the

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1/ While the Revised EA indicated that a total of 834 acres would receive treatments involving timber harvesting (see Revised EA at 24), the sales prospectus indicated that the cutting area comprised 799 acres. See also Revised EA at 32. Presumably, the difference in acreage relates to the road acreage involved in obtaining access to the cutting areas.

2/ As described in the Northwest Forest Plan (NFP) (see note 3, infra), AMA's are "landscape units designated to encourage the development and testing of technical and social approaches to achieving desired ecological, economic, and other social objectives." (NFP at D-1.) A total of 10 AMA's have been established. See generally NFP at D-12 to D-16. While the NFP indicated that the Applegate AMA contained 277,500 acres (NFP at D-12), the Draft Applegate Management Guide stated that the AMA covers a total of 325,000 acres of Federally-owned land including both BLM and Forest Service lands, with BLM land constituting approximately 45 percent of the total. See Draft Applegate Management Guide at 11, 28 (Figure 9).

Aquatic Conservation Strategy (ACS), 3/ the Applegate AMA: Ecosystem Health Assessment (EHA), and the Middle Applegate Watershed Assessment (MAWA). As explained both in the EA and the Area Manager's March 16, 1998, decision, the purpose of the proposal was both to meet the demand for wood products as well as to reduce fuel loadings to lessen the chances of catastrophic fire events 4/ and otherwise improve existing forest conditions by reducing densities in overstocked stands. See Decision Record at 2; Revised EA at 1-2, 5; see also Silviculture Prescription at 4.

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3/ The "Northwest Forest Plan" is the term generally applied to a group of documents relating to the Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. These documents consist of the ROD in which the Secretary of Agriculture and the Secretary of the Interior jointly amended the planning documents of 19 National Forests and 7 BLM Management Districts to adopt a comprehensive ecosystem management strategy, and an Attachment to the ROD entitled "Standards and Guidelines for Management of Habitat of Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl." These Standards and Guidelines include, inter alia, the ACS. See NFP at B-9 to B-32. The Medford District RMP was issued in compliance with the mandate of the NFP and generally replicates its land use allocations and management prescriptions, although there are some variations. See note 9, infra.

4/ The North Murphy Forest Management Project analyzed in the EA not only involved a planned timber sale but also embraced other management actions designed to achieve various policy objectives. Thus, to effectuate the goal of reducing fire hazards, the project envisioned that a number of actions would be taken, including a general understory thinning of areas adjacent to roads and private residences, the establishment of Fuel Modification Zones (FMZ's) encompassing approximately 554 acres (including 62 acres which would be harvested under Alternative 2), and the implementation of rural interface area hazard reductions, where there were residential structures located in close proximity to BLM lands. We note that, while the Draft Applegate AMA Guide called for the reintroduction of fire (in prescribed fire burns) as a key component in future management of the AMA, it expressly recognized that, in many areas of the AMA, a precondition of such practice would be the thinning of overstocked stands and reduction of existing fire hazards. (Draft Applegate AMA Guide at 37-39.)

Both Headwaters and KSWC protested the decision of the Area Manager, alleging numerous grounds for overturning the proposed timber sale. <sup>5/</sup> As noted above, these protests were ultimately rejected by the Area Manager and appellants have pursued the instant appeals.

Before the Board, appellants generally reiterate the arguments which they made below. While there are some substantial variations in the contentions pressed by the two appellants herein, we believe that they can be fairly categorized as embracing the following general concerns:

(1) The adequacy of the environmental analysis and whether or not under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 (1994), an environmental impact statement (EIS) was required;

(2) Whether the harvesting of old growth/late successional forests violated the terms of the Medford District RMP and the NFP;

(3) Whether the harvesting of timber on lands within riparian reserves violated the Aquatic Conservation Strategy; and

(4) Whether the surveys conducted for various protected species violated the "Survey and Manage" guidelines of the NFP.

We will discuss these matters seriatim.

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<sup>5/</sup> In the Decision Record, the Area Manager was careful to point out to prospective protestants that different time limits applied with respect to the timber harvest portion of the decision and the non-timber harvest contract related actions and that they were subject to protest and appeal under differing regulations. (Decision Record at 4.) In their respective protests, both Headwaters and KSWC expressly appealed the timber sale provisions. Accordingly, matters related solely to the non-timber harvest provisions of the EA or Decision Record (see note 4, supra) are not properly before this Board, and arguments related to such issues will not be addressed herein.

Insofar as issues relating to NEPA compliance are concerned, appellants variously allege that the FONSI determination of the Area Manager was unsupported by the record (Headwaters SOR at 4; KSWC SOR at 2), that there was inadequate analysis of cumulative impacts of other timber sales planned in the area (Headwaters SOR at 5, 8; KSWC SOR at 9), that an inadequate range of alternatives was considered (KSWC SOR at 3, 8), and that an EIS should have been issued in connection with the North Murphy Timber Sale (Headwaters SOR at 11-12; KSWC SOR at 10).

[1] At the outset, we believe it appropriate to set forth the legal structure which guides the Board in considering appeals which assert that actions being undertaken by BLM have received inadequate analysis under NEPA. As the Board has noted in many contexts, a FONSI will be affirmed if the record establishes that a careful review of environmental problems has been undertaken, relevant areas of environmental concern have been identified, and the final determination that no significant impact will occur is reasonable. See, e.g., Southern Utah Wilderness Alliance, 144 IBLA 70, 91 (1998); Hoosier Environmental Council, 109 IBLA 160, 173 (1989); Southwest Resource Council, 96 IBLA 105, 94 I.D. 56 (1987). A party challenging a FONSI determination must show that it was premised on a clear error of law or a demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the action under scrutiny. See, e.g., Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380-81 (1993); Powder River Basin Resource Council, 124 IBLA 83, 91 (1992).

Moreover, we have also noted that, where BLM has previously prepared an EIS or an environmental assessment which examined impacts of proposed management decisions, subsequent environmental analyses may briefly summarize the impacts more fully examined in the earlier environmental analysis, a process generally referred to as "tiering." See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 6, 10 n.4 (1991); Michael Gold (On Reconsideration), 115 IBLA 218, 225 n.2 (1990). And, finally, we wish to emphasize a point which we have made in a number of our decisions. The thrust of NEPA is primarily procedural rather than substantive. See Strycker's Bay Neighborhood Council v. Karlin, 444 U.S. 223 (1980). As we explained in State of Wyoming Game and Fish Commission, 91 IBLA 364 (1986):

NEPA proceeds from a recognition that it is inevitable that Government actions will sometimes occur which may have significant negative impacts on certain environmental values. What is critical is that the Government officials determining whether those actions should go forward have a full and complete grasp of the possible consequences of the activity in order that they may take steps to ameliorate adverse impacts to the extent possible, and, if certain impacts cannot be avoided, decide the advisability of proceeding and thereby accepting such impacts.

Id. at 367.

As indicated above, the revised EA expressly tiered its analysis to a number of previous environmental studies. Thus, to the extent that these previous environmental documents can fairly be said to have examined issues raised by appellants in the context of the instant appeal, those documents are properly treated as part and parcel of the analysis prepared

with respect to the North Murphy Forest Management Project. Viewed in conjunction with these other environmental documents, it is clear that appellants' objections cannot be sustained.

While appellants argue with some fervor that BLM's FONSI decision cannot be justified, they generally fail to delineate with any specificity either the issues which they believe were inadequately examined in the environmental analyses or significant impacts which they assert will occur because of the timber sale which have not previously been the subject of an EIS. Even in those few areas in which they do tender specific complaints, there are some instances in which their arguments are clearly lacking in merit.

Both Headwaters and KSWC suggest that the impact of new road construction was inadequately considered. See, e.g., Headwaters SOR at 3; KSWC SOR at 2, 9. In point of fact, however, not only did the Revised EA contemplate only 0.17 miles of new road construction (Revised EA at 16), even that limited new road construction was deleted from the sale prospectus after BLM determined that logging could be successfully accomplished without that segment. See Sales Prospectus, Ex. C. And, while the restoration of 1.57 miles of existing road was included in the sale, BLM notes that this work is directed to correcting severe road drainage and erosion problems which are presently substantial contributors to stream sedimentation. See BLM Answer to Headwaters at 2; BLM Answer to KSWC at 2.



Both appellants also asserted that cumulative impacts were inadequately considered. See Headwaters SOR at 5, 11-12; KSWC SOR at 9-10. The record, however, indicates that cumulative impacts were considered with respect to the possible effects of the project on soil and water resources (Revised EA at 26), on botanical resources (in particular cypripedium fasciculatum, a member of the orchid family (Revised EA at 31)), on wildlife and wildlife habitat (Revised EA at 37-38), and on fisheries (Revised EA at 43). While these analyses were, in some instances (i.e., soil, water, and fisheries), extremely brief, this brevity was arguably the result of the lack of such impacts. However, with respect to the question of cumulative impacts on wildlife and wildlife habitat, which were the areas on which both appellants focussed the bulk of their criticism, the Revised EA dealt with the possible cumulative impacts in some detail in a worse case analysis which directly considered the impact of the North Murphy Timber Project in conjunction with the proposed Scattered Apples and Wild Wonder projects.

Notwithstanding the foregoing, however, Headwaters and KSWC argue that BLM's discussion of cumulative impacts was inadequate. Thus, Headwaters complains that BLM's analysis failed to consider the effects of the Appleseed and Savage Green sales, which, Headwaters asserts, "are directly adjacent to the North Murphy sale." (Headwaters SOR at 12.) Headwaters contends that, given these additional sales and the "generally degraded condition of the Savage Creek watershed," the cumulative impacts are "exponentially more significant and deleterious than that described in the EA."

Id. To similar effect are KSWC's arguments, though KSWC includes the Maple Syrup, Cenoak, Berlin Mummer, and Deer Mom proposed timber sales in the list of proposed timber sales whose impacts must be considered in a cumulative effects analysis. See KSWC SOR at 9.

In response, BLM points out that most of the proposed sales listed above by appellants involve the harvesting of timber from lands which are not only outside the Lower Applegate watershed, where the North Murphy Timber Sale is located, but are totally beyond the entire Applegate River watershed. Included in this group of sales are the Maple Syrup, Cenoak, Berlin Mummer, and Deer Mom proposed timber sales. See BLM Answer to KSWC at 9. We must agree with BLM that, insofar as these specific sales are concerned, appellants have failed to establish a predicate basis for concluding that any consideration of cumulative impacts was required. Turning to the Scattered Apples and Wild Wonder sales, we find, in the absence of any showing to the contrary by appellants, that BLM adequately considered the cumulative impacts of those sales in its EA.

In any event, when appellants' arguments are examined in the context of the previous environmental documents on which BLM relied in preparing its revised EA, it becomes clear that, while appellants may disagree with some of the conclusions reached, the issues relating to cumulative impacts of past and reasonably foreseeable future actions which they raise have been examined and duly considered both in the revised EA and in those

previous environmental analyses. Indeed, cumulative impacts of timber harvesting resulting from implementation of the RMP were necessarily considered in the adoption of the RMP. See generally Medford District Proposed RMP/EIS, Chapter 4.

While this EIS analysis was admittedly District-wide and based on probable sale quantity (PSQ) rather than specified future sales, appellants have failed to demonstrate that the actual sales conducted or the anticipated impacts from those sales varied in any appreciable or relevant manner from the PSQ impact analysis in the EIS. <sup>6/</sup> Appellants have simply failed to establish error in the FONSI determination to the extent that they allege that environmental consequences were inadequately considered.

[2] Turning to the question of whether or not the North Murphy Timber Sale violates various provisions of the NFP and the RMP with respect to the management of old growth/late successional forests, we note that, while Headwaters has repeatedly suggested that the North Murphy Timber Sale will result in the harvesting of old-growth timber (see, e.g., Headwaters SOR

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<sup>6/</sup> We recognize that, insofar as the EIS analyzed harvesting scenarios under the Proposed Resource Management Plan (PRMP), the environmental analysis was not tied to a set of representative harvest units. See Medford District Proposed RMP/EIS at 4-5. Rather, the estimated effects were derived from a random depletion of age class and timber type for the 10-year period of the RMP. Id. at 4-6. While this clearly makes it impossible to predict impacts of specific sales based on the EIS' analysis (in other words, the EIS could not be relied upon to predict the specific impacts of the North Murphy Timber Sale), it is still possible to predict the likely cumulative impacts of all the sales scheduled over that period, provided the underlying premise (random depletion of age class and timber type) is valid. Appellants have made no showing that this underlying premise has been vitiated by the sales of which they complain. Thus, the examination in the EIS of the total cumulative impact likely to result from adoption of the PRMP can properly be relied upon in the Revised EA.

at 3, 10), BLM has insistently responded that this is simply not true. See BLM Answer to Headwaters at 1-2. However, while it is true that no harvesting is scheduled for old growth timber stands, it is also true that areas with mature growth will be harvested. 7/ Thus, harvesting is scheduled in "late successional forests," as that term is defined by BLM. 8/

Under the NFP and the RMP, late successional forests are generally allocated either to late successional reserves (LSR's), aggregating approximately 211,404 acres in the Medford District, which have been set aside for the purpose of protecting and enhancing the late successional forest ecosystems (see RMP at 32-36; NFP ROD at 8; NFP at B-4 to B-9, C-9 to C-21), or are included in the forest Matrix, i.e., those forest lands classified as either part of the General Forest Management Area or within Connectivity/Diversity Blocks whose management objectives include the production of a sustainable supply of timber and other forest

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7/ BLM does admit that "a few older and larger trees are being cut," but argues that there is no scheduled harvesting of old growth stands or old growth habitat as defined in the NFP and RMP. See BLM's Response to KSWC Protest at 11. Old growth is defined as the final seral stage of unmanaged forests which begins to appear at between 175-250 years, whose characteristics include a patchy, multi-layered canopy with trees of several age classes with the presence of large living trees and large snags. (RMP at 109.) By contrast, the mature seral stage covers the period "from the point where stand growth slows to the time when the forest develops structural diversity; approximately age 80 to 200." (RMP at 113.) For inventory purposes, however, "old-growth stands on BLM-administered lands are only identified if they are at least ten percent stocked with trees of 200 years or older and are ten acres or more in size." (RMP at 109.) Thus, the harvesting of isolated trees, even if those trees are more than 200 years old, would not constitute the harvesting of "old growth stands."

8/ The RMP defines late successional forests as "[f]orest seral stages which include mature and old-growth age classes." (RMP at 107.)

commodities (see RMP at 38-40; NFP ROD at 10; NFP at C-39 to C-48). 9/ However, as noted above, the North Murphy Timber Sale embraces lands within the Applegate AMA and, while these lands are not within any LSR, 10/ neither are they part of the forest Matrix. Rather, they are subject to particular management prescriptions applicable to the Applegate AMA.

The RMP allocated 113,912 acres to the Applegate AMA, though it includes more than 150,000 acres of BLM-managed lands. See note 10, supra. Its objectives included the development and testing of "new management approaches to integrate and achieve ecological and economic health and other social objectives," including the "provision of

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9/ Admittedly, the foregoing division of late successional forests between LSR's and Matrix lands is a significant oversimplification since the RMP provides for a total of nine major land allocations. See RMP at 21. (This could be contrasted with the seven land allocation categories utilized in the NFP (see NFP at A-4 to A-6)). However, of the 859,096 total acres covered by the RMP, a total of 709,417 acres are allocated as either LSR's or Matrix lands. Of the remaining 149,679 acres, 113,912 acres are allocated to the Applegate AMA as discussed subsequently in the text. Thus, lands allocated to LSR, Matrix, and AMA classifications constitute almost 96 percent of the acreage involved.

We recognize, of course, that late successional forests, even when not part of an LSR, can be included within riparian reserves as, indeed, are some of the late successional forest lands involved herein. Unlike specific land allocations, riparian reserves occur across all land use allocations, though their acreage is only computed for riparian reserves in the Matrix. See NFP at A-5 to A-6. (In the RMP, computed riparian acreage aggregated 369,200 acres.) While we recognize that significant management constraints may apply to such lands, we believe that the effect of the inclusion of late successional forests within riparian reserves is more appropriately dealt with in the context of an analysis of appellants' arguments relating to riparian reserves generally rather than in an analysis of complaints which are seemingly centered on the harvesting of late successional forests.

10/ In point of fact, 32,937 acres of the Munger Butte LSR are located within the boundaries of the Applegate AMA. See RMP at 38. However, since, under the RMP, the land allocations do not overlap, these are counted as within the LSR allocation rather than the Applegate AMA allocation. In any event, the lands within the Munger Butte LSR are not involved herein.

well-distributed late successional habitat outside reserves, retention of key structural elements of late successional forests on lands subjected to regeneration harvest, restoration and protection of riparian zones, and provision of a stable timber supply." (RMP at 36; see also NFP at C-21 to C-22, D-1 to D-17.) As both the RMP and NFP emphasized, AMA's were intended to provide opportunities for learning and experimentation with the expectation that the knowledge gleaned would then be widely shared. (RMP at 37; NFP at C-22.) But it is also clear that AMA's were "expected to produce timber as part of their program of activities consistent with their specific direction under these standards and guidelines." (NFP at D-8 to D-9.)

While it was noted that "[t]here are no specific management actions/ direction for these forest components in the AMA," it was also provided that coarse woody debris, green trees, and snags should be managed "in a manner that meets the intent of the management actions/direction for the Matrix." (RMP at 37; see also RMP at 195-96 (App. E); NFP at D-10.) Thus, since late successional forests which are part of the forest Matrix may be harvested consistent with the NFP, there is no absolute bar preventing the harvesting of late successional forests, not otherwise reserved, in the Applegate AMA so long as such action fulfills the management prescriptions for the lands involved. 11/

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11/ We note that there is also a Matrix requirement to protect all remaining late successional forest stands in areas where Federal forestlands are comprised of 15 percent or less of late successional forests. See NFP at C-44 to C-45; RMP at 39. This limitation is not applicable herein as the amount of late successional forest in the Murphy watershed is 38 percent. See Revised EA at 27.

BLM argues that its actions are totally in accord with the management directions applicable in the Applegate AMA. It notes that the general purpose of its proposed timber harvest is to restore forest health and vigor by reducing overstocked areas with excessive stand densities through commercial thinning or group selections around large pines. See BLM Answer to Headwaters at 1-2; BLM Answer to KSWC at 1-2; see also Revised EA at 5; 27-28.

BLM emphasizes that one of the delineated objectives of the Applegate AMA is to contribute to a stable timber supply. See NFP ROD at 6; RMP at 36. Indeed, the NFP expressly noted that the area of emphasis for the Applegate AMA was: "Development and testing of forest management practices, including partial cutting, prescribed burning, and low impact approaches to forest harvest (e.g., aerial systems) that provide for a broad range of forest values, including late successional forest and high quality riparian habitat." (NFP at D-12.) BLM argues that its actions under challenge herein are fully in accord with the applicable management guidelines. See, e.g., NFP at B-6.

On this issue, we find ourselves in agreement with BLM. While appellants may be sincere in their opposition to any allowance of any harvesting in late successional forests in the Applegate AMA, they have failed to establish that BLM's actions herein violate either the NFP or the RMP. Their contentions on this point are hereby rejected.

[3] One of appellants' major points of disagreement with BLM relates to their assertion that the timber sale violates provisions of the Aquatic Conservation Strategy (ACS) related to harvesting activities occurring within riparian reserves. As noted above, riparian reserves occur across land allocations. With respect to the 10 AMA's established under the NFP, approximately 40 percent of the land is within riparian reserves. (NFP at D-1.) Insofar as the instant appeal is concerned, approximately 75 acres of riparian reserves are slated for commercial thinning in the North Murphy Timber Sale. 12/

As noted in the NFP, the ACS was devised "to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands." (NFP at B-9.) There are four basic components of the ACS: (1) riparian reserves; (2) key watersheds; (3) watershed analysis; and (4) watershed restoration. A comprehension of the interplay of these elements is necessary in order to understand the thrust of appellants' objections.

Riparian reserves are "portions of watersheds where riparian-dependent resources receive primary emphasis and where special standards and guidelines apply," and may occur along "the margins of standing or flowing water, intermittent stream channels and ephemeral ponds, and wetlands." Id. at B-12, B-13.

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12/ To the extent that appellants attempt to bring the understory thinning treatments provided for by the North Murphy Forest Management Project ROD and Revised EA within the structure of this argument, consideration is foreclosed by their failure to properly appeal the non-timber harvest provisions of the ROD and Revised EA. See note 5, supra.



Under the ACS, a series of "Key Watersheds" were designated 13/ to provide high quality habitat which would serve as refugia for maintaining and recovering habitat of at-risk stocks of anadromous salmonids and resident fish species. Absent the preparation of a watershed analysis, timber harvesting is prohibited within Key Watersheds. See NFP at B-19. Notwithstanding appellants' assertions, however, it is clear that the North Murphy Project is not occurring within a Key Watershed.

Watershed analysis is described in the NFP as a "systematic procedure to characterize the aquatic, riparian, and terrestrial features within a watershed." (NFP ROD at 10.) It is designed for the purpose of "developing and documenting a scientifically-based understanding of the ecological structures, functions, processes, and interactions occurring within a watershed." (NFP at E-4.) The information developed from watershed analysis is then used in prescribing management activities to effectuate a number of varying policy goals. It is, as the NFP noted, "one of the principal analyses \* \* \* used to meet the ecosystem management objectives" adopted in the NFP. (NFP at E-4.) Indeed, in certain instances, as will be examined in more detail below, the existence of a watershed analysis is a precondition for undertaking certain management actions since it provides the contextual basis for decisions at the site level. See NFP at B-23. Watershed analysis would generally cover an

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13/ Key Watersheds are classified as either Tier 1 or Tier 2. A Tier 1 Key Watershed is one which directly contributes to the conservation of at-risk anadromous salmonids, bull trout, or other resident fish species. A Tier 2 Key Watershed is one which, while it might not presently contain at-risk fish stocks, is an important source of high quality water. (NFP at B-18.)

area of between 20 to 200 square miles, or fifth field watersheds. See NFP at B-21; RMP at 47.

Watershed restoration is, of course, the program to restore watersheds as part of a program to aid the recovery of fish and riparian habitat and to improve water quality based on information developed through watershed analysis. The NFP identified three specific components as the most important elements in a program of watershed recovery: (1) control and prevention of road-related runoff and sediment production; (2) restoration of the condition of riparian vegetation; and (3) restoration of in-stream habitat complexity. See NFP at B-31.

Appellants object to the allowance of any timber harvesting in riparian reserves as well as to the fact that BLM has failed to conduct a fifth field watershed analysis, an analysis, appellants contend, which is required by the ACS as a precondition to any management action in those reserves. For example, pointing to the RMP (RMP at 27), appellant KSWC asserts that timber harvest is prohibited in riparian reserves (KSWC SOR at 4). Similarly, appellant Headwaters claims that "[i]t is illegal to cut trees in riparian reserves without a fifth field watershed analysis." (Headwaters SOR at 5.)

In response, BLM asserts that while the NFP does, indeed, require watershed analysis of Key Watersheds prior to implementing any timber harvests, this sale is not occurring within a Key Watershed. See BLM Answer

to Headwaters at 4; BLM Answer to KSWC at 3. BLM argues that its actions are fully in accord with the NFP and the RMP. It notes that it has applied strict restrictions on where commercial thinning can occur, limiting such activities only to class 4 intermittent streams, and emphasizes that such activities were designed both to accelerate the creation of late successional forest conditions and to diminish existing fire risk. See BLM Answer to Headwaters at 5; BLM Answer to KSWC at 4. While BLM admits that a fifth field watershed analysis has not yet been prepared, it argues that its treatment is based on two watershed assessment documents which analyzed the larger Applegate watershed, viz., the EHA and the MAWA, and which addressed treatments of riparian reserves within the AMA. Moreover, BLM adverts to the analysis which accompanied the planning of the North Murphy Timber Sale and argues that "[b]oth the context and the site specific considerations have been more than adequately addressed \* \* \* particularly in light of the very limited and low-impact restoration and protection actions of the timber sale within the riparian reserves." (BLM Answer to Headwaters at 4.)

There is no question that if this timber sale involved a Key Watershed, a watershed analysis would be required as a prerequisite to any decision to permit timber harvesting. See NFP at B-19. It is, however, undisputed that this is not a Key Watershed. 14/ And, while "programmed"

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14/ While it is also clear that watershed analysis is needed to change riparian reserve boundaries (see NFP at B-13, C-3, C-31), it is equally clear that nothing in BLM's actions purported to alter existing riparian boundaries, notwithstanding Headwaters' suggestions to the contrary. See Headwaters SOR at 5.

timber harvests are prohibited within riparian reserves, 15/ this does not mean that all timber harvesting is prohibited in riparian reserves. On the contrary, the NFP's standards and guidelines provide three exceptions to the general prohibition of timber harvesting:

- a. Where catastrophic events such as fire, flooding, volcanic, wind, or insect damage result in degraded riparian conditions, allow salvage and firewood cutting if required to attain Aquatic Conservation Strategy objectives.
- b. Salvage trees only when watershed analysis determines that present and future coarse woody debris needs are met and other Aquatic Conservation Strategy objectives are not adversely affected.
- c. Apply silvicultural practices for Riparian Reserves to control stocking, reestablish and manage stands, and acquire desired vegetation characteristics needed to attain Aquatic Conservation Strategy objectives.

(NFP at C-32.)

While the first two exceptions clearly do not apply, BLM argues that its actions are totally in accord with the third exception, since the entire thrust of the harvesting proposed for riparian areas is directed towards restoring vigor to those riparian areas and lessening the likelihood of catastrophic crown fires occurring by thinning presently existing over-stocked stands. Moreover, BLM notes that the NFP expressly provides that, within AMA's, "[f]lexibility is provided to meet objectives for Riparian Reserves and Key Watersheds." (NFP at C-22.) Considering that the mandate for the Applegate AMA was to develop and test "forest

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15/ Timber harvests cannot be "programmed" for lands within riparian reserves because such lands are not included in the calculations of the timber base. See NFP at C-31.

management practices, including partial cutting, prescribed burning, and low impact approaches to forest harvest \* \* \* that provide for a broad-range of forest values, including late-successional and high-quality riparian habitat" (NFP at D-12), BLM argues that, far from being contrary to the NFP and RMP, its actions challenged herein are fully consonant with both the expressed purposes and underlying intent of those documents.

While we do not doubt the sincerity of appellants' expressed concerns as to the possible impact which commercial thinning may have on the riparian areas, we must agree with BLM that its actions are, in fact, totally in accord with the NFP. Even leaving aside BLM's asserted reliance on the watershed analysis provided by the EHA and the MAWA, there is simply nothing in either the NFP or the RMP that requires preparation of a watershed analysis prior to implementing "silviculture practices" on riparian reserves in non-Key Watersheds. <sup>16/</sup> Particularly given the fact that the Applegate AMA was established in the NFP with a mandate to explore different techniques to determine what management policies might best result in improved riparian habitat, we must afford BLM wide latitude in choosing those management prescriptions which it believes are most likely to accomplish those ends. As a general matter, a mere difference of opinion provides an inadequate basis for disturbing decisions of BLM personnel in

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<sup>16/</sup> In this regard, we would point out that the exception relating to salvage trees expressly requires watershed analysis. The failure of the NFP to impose a similar limitation on the "silvicultural practices" exception, which immediately follows the salvage tree exception in the NFP, must be seen as a deliberate decision not to require the completion of watershed analysis as a mandatory precondition to the implementation of such practices.

the field. See, e.g., Owen Severance, 145 IBLA 70, 74 (1998); In re Upper Floras Timber Sale, 86 IBLA 296, 305 (1985); Utah Wilderness Association, 72 IBLA 125, 147 (1983). We can perceive no reason in departing from this general deference in the instant matter and, accordingly, reject appellants' challenge to BLM's decision to allow commercial thinning on 75 acres of riparian reserves within the Applegate AMA.

[4] The last issue which we will address concerns appellants' assertions that BLM's decision violates the "Survey and Manage" standards and guidelines established by the NFP. In the NFP ROD, the "Survey and Manage" standards and guidelines were described as follows:

The standards and guidelines require land managers to take certain actions relative to rare species of plants and animals, particularly amphibians, bryophytes, lichens, mollusks, vascular plants, fungi, and arthropods. These include: (1) manage known sites of rare organisms; (2) survey for the presence of rare organisms prior to ground-disturbing activities; (3) conduct surveys to identify locations and habitats of rare species; and (4) conduct general regional surveys for rare species.

(NFP ROD at 11.) It was recognized, however, that "[f]or many species and taxonomic groups, adequate survey techniques may not exist," and, therefore, the implementation included "a time line for developing protocols for the surveys and conducting the necessary survey work." Id.

As indicated above, the standards and guidelines adopted differing time lines for implementation of each of the four survey strategies described. However, since the focal point of appellants' objections are

directed to Survey Strategy 2, we will limit consideration herein to the standards and guidelines relevant to that survey strategy.

17/

In relevant part, the standards and guidelines for Strategy 2 surveys provide:

Measures to survey for species and manage newly discovered sites are to be phased-in over a somewhat longer timeframe than the measures specified for currently known sites. \* \* \* [P]rotocols have not been developed for surveys for all of these species, and the expertise needed to conduct them is not readily available in some cases. Efforts to design protocols and implement surveys should be started immediately. \* \* \* Within the known or suspected ranges and within the habitat types or vegetation communities associated with the species, surveys for \* \* \* red tree voles \* \* \* must precede the design of all ground-disturbing activities that will be implemented in 1997 or later. Development of survey protocols for the other 71 species listed in Table C-3 must begin in 1994 and proceed as possible. These surveys must be completed prior to ground disturbing activities that will be implemented in F.Y. 1999 or later. \* \* \* These surveys may be conducted at a scale most appropriate to the species. For most species, this survey would start at the watershed analysis level with identification of likely species locations based on habitat. Those likely locations would then be thoroughly searched prior to implementation of activities. For other species, the identification of likely specie sites may be most appropriately done at the scale of individual projects. Surveys should be designed for maximum efficiency, focusing on the likely range and habitats of the target species. \* \* \* Survey protocols and proposed site management should be incorporated into interagency conservation strategies developed as part of ongoing planning efforts coordinated by the Regional Ecosystem Office.

(NFP at C-5.)

17/ Appellants' focus is on Survey Strategy 2 because the Survey and Manage arguments which they raise are generally directed toward species (e.g., red tree voles and cypripedium fasciculatum) listed in that category. See NFP at C-59, C-61.

Both appellants assail the BLM action on two separate fronts. First of all, as it affects red tree voles, appellants claim inadequate surveys were conducted and both challenge an Instruction Memorandum (No. OR-97- 009), dated November 4, 1996, which provided guidance for "Survey and Manage" requirements as they related to the red tree vole. <sup>18/</sup> Second, with respect to a number of other Strategy 2 species, appellants assert that required surveys were also not performed and that such surveys were required because the timber harvest will not occur until the beginning of FY 1999, notwithstanding an Instruction Memorandum (No. OR-97-007), dated November 1, 1996, which defined "implemented" as used within Strategy 2 standards and guidelines to mean the date that the NEPA document relating to the undertaking was signed.

With respect to the red tree vole, BLM disputes both the assertion that intensive surveys were required under the NFP with respect to the lands involved in the North Murphy Timber Sale and, alternatively, rebuts appellants' claims that the REO had no authority to issue the November 4, 1996, memorandum.

In its response to Headwaters' protest, which similarly attacked BLM's asserted failure to survey for red tree voles, BLM noted:

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<sup>18/</sup> In essence, this memorandum exempted (on an interim basis through the year 2000) certain lands from the requirement that a Strategy 2 survey for red tree voles be conducted prior to ground disturbing activities where suitable habitat for the red tree vole is involved. Appellants challenge the authority of the Regional Ecosystem Office (REO) to alter requirements established in the NFP.



To the best of our knowledge, your contention that the sale area includes RTV [red tree vole] habitat is incorrect. As you provide no information or specific location(s) of the habitat or nest sites to support your contention, we are unable to evaluate your claim or to make adjustments to the project to account for it. In the preparation of the project we conducted extensive surveys to locate suitable RTV habitat, but failed to find any suitable habitat in the project area. Thus the more intensive surveys outlined in the current survey protocol are not necessary and were not conducted. None the less, in areas that we thought might even marginally provide RTV habitat we conducted specific surveys for the RTV without finding evidence of them.

(BLM Response to Headwaters Protest at 2; see also BLM Response to KSWC Protest at 7-8.)

While, on appeal both Headwaters and KSWC have reiterated their assertions that a Strategy 2 survey for the red tree vole was required, neither has provided any evidence which would contravene BLM's assertion that there is no suitable red tree vole habitat within the project area. See Headwaters SOR at 9; KSWC SOR at 5. Absent the existence of such habitat, there is no requirement to conduct a survey since the NFP expressly provided that "the survey and manage provision for each species will be directed to the range of that species and the particular habitats that it is known to occupy." (NFP at C-4.) We find that the record before the Board fails to substantiate appellants' claims that BLM was deficient in its handling of the Survey and Manage guidelines as they relate to red tree voles. In light of the foregoing, issues relating to the authority

of the REO to alter the Survey and Manage guidelines with respect to surveys required for red tree voles are moot. <sup>19/</sup>

Insofar as surveys for other species under Category 2 are concerned, <sup>20/</sup> appellants and BLM differ fundamentally on an interpretation of the language used in NFP. The NFP provided that, with the exception of seven named species, surveys for all other species listed in Table C-3, "must be completed prior to ground disturbing activities that will be implemented in F.Y. 1999 or later." (NFP at C-5.) Appellants argue that, since the North Murphy Timber Sale is to be harvested within FY 1999, the NFP required surveys for all Category 2 species. BLM argues, relying on Instruction Memorandum No. OR-97-007 that, as used in this section of the

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<sup>19/</sup> While not dispositive, we do feel that certain observations on this question may be in order. While BLM suggests that Instruction Memorandum No. OR-97-009 was issued by the REO (see, e.g., BLM's Answer to KSWC at 7), this is clearly not the case. The REO is an office which provides staff work and support and makes recommendations to the Regional Interagency Executive Committee (RIEC), a group consisting of agency heads of the Forest Service, BLM, Fish and Wildlife Service, National Marine Fisheries Service, Bureau of Indian Affairs, and the Environmental Protection Agency, among others. See NFP at E-16. The Instruction Memorandum at issue was not issued by the REO but rather was signed by the BLM Oregon State Director and the Regional Forester for Region 6 and includes language proving that "we will submit to the REO the documentation for adding the red tree vole to Component 4 under the guidance for changing species status found on p. C-6 of the ROD." (Instruction Memorandum No. OR-97-009 at 4 (emphasis added).) While the REO is assigned authority "to coordinate" the development of survey protocols (NFP at C-5), any change in assigned Strategy levels could only be effectuated by the RIEC. See NFP at E-16 ("Although the standards and guidelines variously refer to the Regional Ecosystem Office for reviews and other actions, it is understood that the Regional Ecosystem Office recommends to the Regional Interagency Executive Committee who has the responsibility for the decisions." (Emphasis in original).)

<sup>20/</sup> In this regard, however, we note that cypripedium fasciculatum has both a Strategy 1 (management of known sites) and a Strategy 2 (survey and manage) listing. See NFP at C-61. In point of fact, a number of known cypripedium fasciculatum sites were identified and protective buffers around these sites were established. See Revised EA at 23, 28.

NFP, the date of "implementation" is the equivalent of the date that the NEPA documentation (in this case, the Revised EA) issued and, therefore, since the Revised EA issued in FY 1998, Category 2 surveys for these species were not required.

Appellants vigorously challenge BLM's interpretation as contrary to the plain meaning of the language used in the NFP. Appellant KSWC argues that "implementation" is the ground-disturbing activity and notes that Council on Environmental Quality regulations define the "implementing" process as assuring that "decisions are carried out." (KSWC SOR at 7.) Moreover, KSWC points out that, in discussing the Standards and Guidelines relating to Category 2, the NFP ROD noted that "these surveys must be completed prior to ground disturbing activities that will be authorized or implemented in FY 1999 or later." See NFP ROD at 37 (emphasis supplied). Appellant argues that this shows that NFP recognized the difference between authorization and implementation and that BLM's attempt to treat authorization (i.e., issuance of NEPA documentation) as the equivalent to implementation cannot be sustained. (KSWC SOR at 7-8.)

For its part, BLM notes that, under Instruction Memorandum No. OR-97- 007, which was signed by the BLM California and Oregon State Directors and the Regional Foresters for Regions 5 and 6, the interagency interpretation was that "NEPA decision equals implemented." See Instruction Memorandum No. OR-97-007 at 2. BLM argues that its actions herein are fully in accord with this interpretation.

There is no gainsaying the fact that BLM has acted in accord with Instruction Memorandum No. OR-97-007.

Whether the interpretation which that memorandum applies to the term "implemented" is consistent with the NFP, however, is a different matter.

As a general matter, we would be inclined to agree with appellants that ground-disturbing activities are "implemented" when they, in fact, occur. However, as we shall show, there is a latent ambiguity within the NFP as to the proper interpretation of the "implementation" concept. The Category 2 guidelines actually invoke the implementation standard twice, but they do so to varying effect. See NFP at C-5. With respect to seven listed species, the NFP directs that surveys "must precede the design of all ground-disturbing activities that will be implemented in 1997 or later." This provision clearly differentiates between planning (design) and implementation. Not so with the second reference. Thus, the NFP provides with respect to the remaining species covered under Category 2 that "[t]hese surveys must be completed prior to ground disturbing activities that will be implemented in F.Y. 1999 or later." No differentiation is made between design and implementation.

Rather than clarifying matters, the ROD discussion cited by KSWC actually adds a further element of confusion. While KSWC emphasized the language which provided that "surveys must be completed prior to ground disturbing activities that will be authorized or implemented in FY 1999,"

the succeeding sentence undercuts its reliance. Thus, the ROD continues, "[t]his will provide agencies a maximum of four full fiscal years (FYs 1995, 1996, 1997, and 1998) in which to develop and apply survey protocols for these species." (NFP ROD at 37.) Given the lead time which is necessarily involved in timber harvesting, the only way that four full fiscal years would be available for development of protocols would be if "implemented" were interpreted to mean "designed" or "authorized." While the matter is clearly not free of controversy or doubt, we will defer to the interpretation of "implemented" promulgated by Instruction Memorandum No. OR-97-007. Accordingly, appellants' arguments on this issue must be rejected.

In conclusion, we find that there was no violation of NEPA, that the harvesting of late successional forests within the Applegate AMA did not violate the terms of either the NFP or RMP, that the selective harvesting via commercial thinning of overstocked lands within riparian reserves within the Applegate AMA for the purpose of restoring forest vigor and lessening the dangers of catastrophic fires did not violate the ACS, and that BLM's actions with respect to the Survey and Manage mandate of the NFP were in accord with existing interpretations of the relevant Category 2 provisions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision

appealed from is affirmed and the stay requests which appellants filed are denied as moot.

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James L. Burski  
Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge

